

Surface Mining Reclamation and Enforcement, Interior

§ 938.15

AUTHORITY: 30 U.S.C. 1201 *et seq.*

§ 938.1 Scope.

This part contains all rules applicable only within Pennsylvania that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 33079, July 30, 1982]

§ 938.10 State regulatory program approval.

The Pennsylvania state program as submitted on February 29, 1980, as amended on June 9, 1980, as resubmitted on January 25, 1982, and amended on April 9, 1982, and May 5, 1982, is conditionally approved, effective on July 31, 1982. Beginning on that date, the Department of Environmental Resources shall be deemed the regulatory authority in Pennsylvania for all surface coal mining and reclamation operations and for all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Pennsylvania permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Environmental Resources agreeing to the conditions in 30 CFR 938.11 are available at the following locations:

(a) Pennsylvania Department of Environmental Resources, Market Street State Office Building, 400 Market Street, P.O. Box 2063, Harrisburg, Pennsylvania 17101-2063; Telephone: (717) 787-4686.

(b) Office of Surface Mining Reclamation and Enforcement, Third Floor, suite 3C, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

[59 FR 17930, Apr. 15, 1994]

§ 938.11 Conditions of State regulatory program approval.

The approval of the Pennsylvania state program is subject to the Commonwealth revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statutes, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the Commonwealth, the component of the program to which the Secretary recommends the change be made.

(a)-(h) [Reserved]

(i) Termination of the approval found in § 938.10 will be initiated on August 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of enacted laws, or other program amendments providing for the award of costs and expenses which amendments are no less effective than 30 CFR 840.15 and in accordance with section 525(e) of SMCRA.

[47 FR 33079, July 30, 1982, as amended at 48 FR 13417, Mar. 31, 1983; 48 FR 45391, Oct. 5, 1983; 49 FR 20492, May 15, 1984; 49 FR 27319, July 3, 1984; 51 FR 18321, May 19, 1986]

§ 938.12 [Reserved]

§ 938.15 Approval of Pennsylvania regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the FEDERAL REGISTER and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the FEDERAL REGISTER.

Original amendment submission date	Date of final publication	Citation/description
April 26, 1983, May 12, 1983.	October 5, 1983	Bureau of Water Quality Management Underground Mine/Coal preparation Plant Permit Application Instructions; Bituminous Underground Mining Operation Permit/Manual; Coal Refuse Disposal Permit Application; Anthracite Coal Refuse Disposal Permit Application; Anthracite Bank Removal and Reclamation Permit Application; Anthracite Surface Mine Permit Application; Anthracite Underground Mining Operation Permit Application/Manual; Memorandum of Understanding between the Pennsylvania Department of Environmental Resources and the Pennsylvania Museum and Historical Commission.
August 1, 1983	January 4, 1984	25 PA Code 89.143(2)(iii)(A) through (D), (4), .144(b)(3), .145(a)(4), (b), (d), .146(e), .147(a).

Original amendment submission date	Date of final publication	Citation/description
January 17, 1984	March 20, 1984	Pennsylvania policy statement: Citizen Complaint Procedures, Department of Environmental Resources Inspection and Enforcement Policy for Mining Operations, Civil Penalty Program.
October 31, 1983	May 15, 1984, July 3, 1984.	25 PA Code 86.5, .38(b), .112(b), .134(c), .211; 87.1, .112(c)(1), (2), (d), (e), .144, .138, .175; 89.86(a)(1), .161, .162, .163; 90.1, .112(c), (d), (e); addendum to the DER Inspection and Enforcement Policy for Mining Operations.
March 30, 1984	November 27, 1984	25 PA Code chapter 88, subchapters A through D, F.
March 2, 1984	April 4, 1985	Blaster training, examination and certification program, as contained in 25 PA Code chapter 210, subchapter A.
April 19, 1985	August 15, 1985	Blaster certification program.
April 18, 1985	November 4, 1985 ..	25 PA Code chapter 89, subchapter F on subsidence control regulations.
September 5, 1985 ..	February 19, 1986 ..	Act 158 of 1984; 25 PA Code chapter 87, subchapter F; chapter 88, subchapter G; letters from the Pennsylvania Deputy General Counsel and the First Deputy Attorney General to Rebecca W. Hanmer, Director, Office of Water Enforcement Permits, U.S. EPA, dated July 8, 1985, and August 19, 1985, respectively.
November 2, 1984	May 19, 1986	25 PA Code 86.37(a)(13), .171(e)(12), .172(d)(2)(iii); 88.1—definitions for “cropland,” “historically used for cropland,” “prime farmland,” and “soil survey”, .24(b)(4), .30(a), (1), .31(a)(7), .32, .61, .129, .134(a), (e), .135(c)(1), (f)(2), (h), .136(a), (c), .137(18), (19), .217, .330, .381(b)(2), (c)(6), (8), (9), .491(i)(1), (13), (22), (23), (j), (k), .492(m), .493(8).
September 30, 1985	September 8, 1986	Civil Penalty Program: §§I, II.2, II.4, II.8; Inspection and Enforcement Policy: §§II.B.2.a.(4), (5), E, J.
April 18, 1985	June 18, 1987	25 PA Code 89.143(b).
January 22, 1987	July 14, 1987	§ 4.2(F)(II): right-of-entry requirements.
April 14, 1987	October 27, 1988 ...	§§II.J of the Inspection and Enforcement Policy, II.2 of the Civil Penalty Program, both concern alternative enforcement actions for failure to abate violations.
December 5, 1988	July 14, 1989	25 PA Code 86.1, .12; 88.1, .381; 89.5.
August 17, 1988	August 18, 1989	Civil Penalty Program, §II (Assessment), paragraph 4; Program Guidance Manual, §1:3:6 (Civil Penalty Assessments) Part 1—Coal, paragraph 4.
August 21, 1986	November 3, 1989 ..	PA Policy Statement entitled Reclamation in Lieu of Cash Payment for Civil Penalties found in Department of Environmental Resources Program Guidance Manual at §1:3:9.
December 22, 1989 ..	May 31, 1991	25 PA Code 86.17(e), .83(a)(2), .112(b)(1), .158(b)(1), (2), (3), .174(d)(1), .175(1), (2), (3), .182(d); 87.73, .112(b)(1), (f), .125(a), .127(e)(2), (h), .131(n), .135(a), .138; 88.24(b)(4), .492(c)(4); 89.34(a)(1), (2)(ii), .59(a)(1), (2), (3), .71(d), .82, .101(a), (d), .172(b); 90.112(b)(1), (d), (f), .150.
September 24, 1986	October 24, 1991 ...	25 PA Code 86.182, .186 through .190; PA SMCRA §§3.1, 4(a), (b), 18(c)(i), 18.8.
May 27, 1992	October 28, 1992 ...	25 PA Code 86.83, .94.
June 2, 1992	November 16, 1992	25 PA Code 86.1; 88.1, .381; 89.5.
December 18, 1991 ..	December 30, 1992, January 14, 1993, April 8, 1993.	25 PA Code 86.1, .36(c), .37(a), (c), .41, .43, .44, .52(c)(4), .53, .55(d), .62, .63, .101, .102, .129, .132, .133, .134(3)(ii)(C), (12), .136, .151(a), (d), (h), .163, .165, .193(3), (f), .194, .195, .202, .212; 87.1, .11, .14, .21, .42(2), .54(a)(9), (22), .77, .112(c), .151(d), .155, .160, .166; 88.1, .22(2), .31(a)(9), (22), .56, .115, .116, .381(c)(9), .491(a)(1)(ii), (i)(7), .492(f); 89.5, .26, .38(a), (b), (c), .86, .90, .111(c); 90.1, .11(a)(3), .21(a)(9), (24), .40, .112(c), .134, .140, .155(d), .159.
February 18, 1993	July 6, 1993	25 PA Code 86.17.
March 9, 1993	December 6, 1993 ..	PA SMCRA §4(d) concerning financial instruments for performance bonds.
May 11, 1993	July 20, 1994	25 PA Code 86.142, .159, .166.
October 24, 1994	April 3, 1995	25 PA Code 86.81 through .89, .91 through .95.
December 19, 1996 ..	May 30, 1997	25 PA Code, Chapter 86, Subchapter D: 86.101; 86.102; 86.103; 86.121; 86.122; 86.123; 86.124; 86.125; 86.126; 86.127; 86.128; 86.129; 86.130.
January 23, 1995	November 7, 1997 ..	Chapters 86 through 90.
September 13, 1995	April 22, 1998	Pennsylvania law Act 1994–114 concerning the special authorization for refuse disposal in areas previously affected by mining which contain pollutional discharges: Title and 1; 3; 3.2(b); 4.1; 6.1(h)(5), (i); 6.2; 6.3; 15.1.
October 8, 1998	March 26, 1999 and June 8, 1999.	52 P.S. 1396.3, 1396.4h.
August 17, 1998	February 2, 2000	Letter from Pennsylvania to OSM dated August 17, 1998 (PA–837.80), except a decision on the required amendment at 30 CFR 938.16(www) is deferred.
November 8, 1999	March 23, 2000	25 PA Code §§86.80, 86.81, 86.82, 86.83, 86.84, 86.85, 86.86 (deleted), 86.87, 86.91 (deleted), 86.92, 86.94, 86.95 (deleted). Note: The incorporation of the reference to §89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is approved to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The incorporation of this reference into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1).

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Original amendment submission date	Date of final publication	Citation/description
November 30, 1999 ..	June 26, 2000	<p>25 PA Code 86.81(a)(2)(iii) is approved to the extent that the SOAP funds are not used to fund the activities required under 25 PA Code §§ 87.41 and 87.42(1) or §§ 88.21 and 88.22(1).</p> <p>The reference of §§ 87.77, 88.56 and 89.38 (regarding archaeological and historic information) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is approved to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The incorporation of these references (regarding public parks) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).</p> <p>25 Pa. Code 86.2, 86.37, 86.40, 86.64, 86.70, 86.132–86.134, 86.174, 87.1, 87.77, 87.93, 87.97, 87.101, 87.106, 87.126, 87.127, 87.138, 87.144, 87.146, 87.159, 87.160, 87.166, 87.173, 87.174, 87.176, 87.209, 88.1, 88.56, 88.83, 88.91, 88.96, 88.118, 88.133, 88.138, 88.144, 88.191, 88.221, 88.231, 88.237, 88.283, 88.291, 88.296, 88.334, 88.335, 88.341, 88.492, 88.509, 89.38, 89.65, 89.67, 89.82, 89.87, 89.88, 89.90, 90.1, 90.40, 90.93, 90.97, 90.101, 90.106, 90.134, 90.140, 90.147, 90.150, 90.166.</p>

[62 FR 9953, Mar. 5, 1997, as amended at 62 FR 29296, May 30, 1997; 62 FR 60177, Nov. 7, 1997; 63 FR 19820, Apr. 22, 1998; 64 FR 30388, June 8, 1999; 65 FR 4886, Feb. 2, 2000; 65 FR 15558, Mar. 23, 2000; 65 FR 39299, June 26, 2000]

§ 938.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17, Pennsylvania is required to submit the following proposed program amendments by the dates specified.

(a)–(e) [Reserved]

(f) By August 24, 1987, Pennsylvania shall amend its regulations at 88.129(f)(1) and (2) and the corresponding provisions under Chapter 88, Subchapters C, D, and F (88.217, 88.330 and 88.491) or otherwise amend its program to be consistent with section 510(d) of SMCRA by requiring that the restoration of prime farmland soil productivity shall be determined on the basis of measurement of crop yields.

(g) [Reserved]

(h) By November 1, 1991, Pennsylvania shall submit information, sufficient to demonstrate that the revenues generated by the collection of the reclamation fee, as amended in § 86.17(e), will assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). Pennsylvania could provide such a demonstration through an actuarial study showing the Fund's soundness or financial solvency. In addition, Pennsylvania shall clarify the procedures to be used for bonding the sur-

face impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim.

(i)–(l) [Reserved]

(m) By November 1, 1991, Pennsylvania shall amend its rules at § 86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value.

(n) By November 1, 1991, Pennsylvania shall amend § 86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

(o) By November 1, 1991, Pennsylvania shall amend § 86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the